IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION NO. 237 OF 2002

Poonam Karnavat & another ... Petitioner

Vs.

Shri. Shersingh Thapa and Ors. ...Respondents

Mr. N.M. Ganguli for Petitioner.

Mr. S. Shreedharan, A.G.P. for Respondnet Nos. 3 and 5.

CORAM : F.I. REBELLO,J.
DATED : AUGUST 06, 2004
P.C. :

1. Rule. Heard forthwith.

2. The Petitioners have moved this court for various reliefs. The reliefs though happily not worded, what the petitioner basically challenge are the recovery certificate issued against the petitioners pursuant to the judgement of the Second Labour Court dated 20.12.1999. By the order, the Presiding Officer, 2nd Labour Court passed an order directing the applicant to recover Rs.1,40,048/- from M/s. Sunrise Building and Petitioner No. 1 herein. The applicant is Respondent No. 1 who had filed an application under Section 33(c)(2) of the Industrial Disputes Act, 1947. Based on the said order, certificate was issued by the Assistant

Labour Commissioner which respondent Nos. 4 and 5 are seeking to recover by initiating proceedings under Land Revenue Code.

3. The Petitioners approached this court on the ground that the recovery has to be against the assets of the society namely M/s. Sunrise Cooperative Housing Society Ltd. and not against the Petitioner Nos. 1 or 2. In fact there is no order whatsoever against Petitioner No. 2. Though final relief has not been sought, interim relief was sought against the said orders.

4. The Petitioner herein have taken out proceedings before the Labour Court for setting aside the order dated 21.11.1998. By order of 12.12.2001 the learned Labour Court without considering the cause title has allowed the applicant company to proceed with the restoration application on depositing amount of Rs.35,000/-. Mr. Ganguli on instructions makes a statement that the said amount of Rs.35,000/- has been deposited and proceedings for setting aside the order dated 20.12.1999 are pending before the Second Labour Court, Mumbai being M.A. (IDA) No. 31 of 1999 in Application (IDA) No. 135 of 1999.

5. Considering the above, the ends of justice will be met if the following order is passed :

(1) The Respondent Nos. 4 and 5 are directed not to proceed further based on the certificate issued by the Asst. Commissioner for Labour for recovering the sum of Rs.1,40,048/- from the petitioners herein.

(2) The order against Petitioner No. 2 for sale of the flat is set aside as order dated 20.,12.1999 has not be passed against Petitioner No. 2.

(3) The 2nd Labour Court, Mumbai is directed to dispose of the M.A. (IDA) No. 31 of 1999 within the period of six months from today.

(4) Liberty to petitioner No. 1 to amend cause title of the application either to implead society and or administrator either as applicant or as opponent. The Second Labour Court to allow such impleadment considering the order of 20.12.1999.

(5) If the order dated 20.12.1999 is not set aside, Respondent Nos. 4 and 5 to proceed in the matter

of recovery certificate after giving opportunity of hearing to petitioner No. 1 herein. At any rate considering that Respondent No. 1 was employee of Respondent No. 2 society, the assets of Respondent No. 2 must be attached/sold of and the amount should be recovered from Respondent No. 2 in the first instance. The recoveries should be first against the bank deposits and other movable properties of society failing which immovable assets and the property of Respondent No. 2 can be proceeded with.

(6) Rule made absolute in aforesaid terms. No order as to costs.

(7) Personal Secretary to issue authenticated copy of this order.

(F.I. REBELLO,J.)